

**ANTIGUA AND BARBUDA**



**DIGITAL ASSETS BUSINESS BILL, 2020**

**No.    of 2020**



**DIGITAL ASSETS BUSINESS BILL, 2020**

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**ANTIGUA AND BARBUDA**  
**DIGITAL ASSETS BUSINESS BILL, 2020**  
**No. of 2020**

**AN ACT** to regulate persons carrying on digital asset business and for the protection of the interests of clients or potential clients of persons carrying on digital asset business and to provide for other matters connected and related thereto:

**ENACTED** by the Parliament of Antigua and Barbuda as follows:

**PART I**  
**PRELIMINARY**

**1. Short title and commencement**

(1) This Act may be cited as the Digital Assets Business Act 2020.

(2) This Act shall come into effect on a day to be appointed by the Minister by Notice published in the Gazette.

**2. Interpretation**

(1) In this Act, unless the context otherwise requires —

“Commission” or “FSRC” means the Financial Services Regulatory Commission established under The Financial Services Regulatory Commission Act 2013, No. 5 of 2013;

“company” means a body corporate wherever incorporated;

“controller” has the meaning given in section 3(3);

“Court” means the Eastern Caribbean Supreme Court;

“custodial wallet provider” means provision of the services of storing or maintaining digital assets or a virtual wallet on behalf of a client for the purposes of trading, exchange or payment; this does not include client managed safety deposit facilities provided by regulated banking institutions.

“cyber reporting event” means any act that results in unauthorized access to, disruption, or misuse of the electronic systems or information stored on such systems of a licensed undertaking including any breach of security leading to the loss or unlawful destruction or unauthorized disclosure of or access to such systems or information;

“cyber security event” means any act or attempt, successful or unsuccessful, to gain unauthorized access to, disrupt, or misuse the electronic systems or information stored on such systems of a licensing undertaking;

“decision notice” means a notice prepared in accordance with section 35;

“digital asset” means anything that exists in binary format and comes with the right to use it and includes a digital representation of value that—

- (a) is used as a medium of exchange, money, unit of account, or store of value and is not legal tender, whether or not denominated in legal tender;
- (b) is intended to represent assets such as debt or equity in the promoter;
- (c) is otherwise intended to represent any assets or rights associated with such assets;  
or
- (d) is intended to provide access to an application or service or product by means of distributed ledger technology;
- (e) a transaction in which a person grants value as part of an affinity or rewards program, which value cannot be taken from or exchanged with the person for legal tender, bank credit or any digital asset; or
- (f) a digital representation of value issued by or on behalf of the publisher and used within an online game, game platform, or family of games sold by the same publisher or offered on the same game platform;

“digital asset business” has the meaning given in subsection (2);

“digital asset services vendor” means a person that—

- (a) under an agreement as part of its business—
  - (i) can undertake a digital asset transaction on behalf of another person;
  - (ii) has power of attorney over another person’s digital asset;
- (b) operates as a market maker for digital assets;

“director” has the meaning given in section 3(2);

“distributed ledger technology” means a database system in which—

- (a) information is recorded and consensually shared and synchronised across a network or multiple nodes; and
- (b) all copies of the database are regarded as equally authentic;

“documents” includes information recorded in any form; and in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;

“exchange” means to assume control of digital assets from or on behalf of a client, to sell, trade, or convert—

(a) digital assets for fiat currency, bank credit or one or more forms of digital assets;  
or

(b) fiat currency or bank credit for one or more forms of digital assets;

“financial year” means the period not exceeding 53 weeks at the end of which the balance of an undertaking’s accounts is struck or, if no such balance is struck or a period of more than 53 weeks is employed for that purpose, then calendar year;

“fiat currency” means currency issued by the relevant body in a country or by a government that is designated as legal tender in its country of issuance through amongst other things, government decree, regulation, or law;

“licence” means a licence issued by the Commission under section 9 and "licensee" and "licensed" shall be construed accordingly;

“licensed undertaking” means a body corporate that is licensed to carry on a digital asset business pursuant to section 9 of this Act.

“market maker” means a person conducting the business of trading in digital assets including, but not limited to, quoting buy and sell prices in furtherance of profit or gain on the bid offer spread;

“Minister” means the Minister of Finance;

“officer” in relation to a licensed undertaking, includes a director, secretary, chief executive or senior executive of the licensed undertaking by whatever name called;

“qualified custodian” means—

(a) any licenced entity regulated by the Commission for such purpose; or

(b) any other person recognised by the Commission for such purpose;

“senior executive” has the meaning given in section 3(6);

“share” has the meaning given in section 27 of the International Business Corporation Act, Cap. 222;

“shareholder controller” has the meaning given in section 3(4);

“subsidiary” has the meaning given in section 364 of the International Business Corporation Act, Cap. 222;

“transfer” means to assume control of digital assets from or on behalf of a client for the purposes of—

(a) crediting the digital assets to the account of another person;



(b) moving the digital assets from one account of a client to another account of the same client;

(c) relinquishing control of digital assets to another person;

“wallet” means a software program that stores private and public keys and interacts with distributed ledger technology to enable users to send, receive and monitor their digital assets;

“warning notice” means a notice prepared in accordance with section 53.

(2) Subject to section 4(5), in this Act, “digital asset business” means the business of providing any or all of the following digital asset business activities to the general public—

(a) issuing, selling or redeeming virtual coins, tokens or any other form of digital asset;

(b) operating as a payment service provider business utilising digital assets which includes the provision of services for the transfer of funds;

(c) operating as an electronic exchange;

(d) providing custodial wallet services;

(e) operating as a digital asset services vendor.

(3) The Minister may, after consultation with the Commission by order amend subsection (2) by adding new provisions, or by amending, suspending or deleting any of the digital asset activities set out thereunder.

(4) An order made under this section is subject to the negative resolution procedure.

### **3. Meaning of "director", "controller", "senior executive" and "associate"**

(1) In this Act, “director”, “controller”, “senior executive” and “associate” shall be construed in accordance with this section.

(2) “Director”, in relation to an undertaking, includes an alternate director and any person who occupies the position of director, by whatever name called.

(3) “Controller”, in relation to an undertaking, means—

(a) a managing director of the undertaking or of another company of which the undertaking is a subsidiary;

(b) a chief executive of the undertaking or of another company of which the undertaking is a subsidiary;

(c) a person who satisfies the requirements of subsection (4);

(d) a person in accordance with whose directions or instructions the directors of the undertaking or of another company of which the undertaking is a subsidiary or

persons who are controllers of the undertaking by virtue of paragraph (c) (or any of them) are accustomed to act.

(4) For the purpose of subsection (3)(c), a person is a shareholder controller in relation to an undertaking if, either alone or with any associate or associates—

- (a) he holds 10% or more of the shares in the undertaking or another company of which it is a subsidiary company;
- (b) he is entitled to exercise or control the exercise of 10% or more of the voting power at any general meeting of the undertaking or another company of which it is such a subsidiary; or
- (c) he is able to exercise a significant influence over the management of the undertaking or another company of which the undertaking is such a subsidiary by virtue of—
  - (i) a holding of shares in it; or
  - (ii) an entitlement to exercise, or control the exercise of, the voting power at any general meeting of the undertaking, or as the case may be, the other company concerned.

(5) In this Act, "majority shareholder controller" means a shareholder controller in whose case the percentage referred to in subsection 4(a) or (b) is 50 or more.

(6) "Senior executive", in relation to an undertaking, means a person (other than a chief executive) who, under the immediate authority of a director or chief executive of the undertaking—

- (a) exercises managerial functions; or
- (b) is responsible for maintaining accounts or other records of the undertaking.

(7) In this section, "chief executive" in relation to an undertaking means a person who, either alone or jointly with one or more persons, is responsible under the immediate authority of the directors for the conduct of the business of the undertaking.

(8) In this Act, "associate" in relation to a person entitled to exercise or control the exercise of voting power in a company, or in relation to a person holding shares in a company, means—

- (a) if that person is an individual—
  - (i) the spouse, child, step-child or parent of that person;
  - (ii) the trustees of any settlement under which that person has a life interest in possession;
  - (iii) any company of which that person is a director;
  - (iv) any person who is an employee or partner of that person;

(b) if that person is a company—

(i) any director of that company;

(ii) any subsidiary of that company;

(iii) any director or employee of any such subsidiary company;

(c) if that person has with any other person an agreement or arrangement with respect to the acquisition, holding or disposal of shares or other interests in that company or under which they undertake to act together in exercising their voting power in relation to it, that other person.

(9) For the purpose of subsection (8), “settlement” includes any disposition or arrangement under which property is held in trust.

#### **4. Carrying on digital asset business in Antigua and Barbuda**

(1) For the purposes of this Act and subject to section 7, a person carries on digital asset business in Antigua and Barbuda if—

(a) it is incorporated or formed in Antigua and Barbuda and carries on any digital asset activity set out under section 2(2); or

(b) is incorporated or formed outside of Antigua and Barbuda and carries on any digital asset business activity set out under section 2(2) in or from within Antigua and Barbuda.

(2) Notwithstanding subsection (1), a person shall be regarded as carrying on digital asset business in or from within Antigua and Barbuda where such person has been specifically regarded for such purposes in accordance with an order made by the Minister under subsection (3).

(3) The Minister acting on the advice of the Commission may make an order specifying the circumstances in which a person is to be regarded for the purpose of this section as—

(a) carrying on digital asset business in Antigua and Barbuda;

(b) not carrying on digital asset business in Antigua and Barbuda.

(4) An order made under subsection (3) is subject to the negative resolution procedure.

(5) This Act shall not apply to any entity owned by the Antigua and Barbuda Government.

#### **5. Advisory Panel**

(1) The Commission may from time to time conduct surveys to determine the effect of digital asset business on—

(a) persons licensed or registered under the Investment Authority Act, 2006, Insurance Act 2007, the Small Business Development Act, 2007, Cooperate

Management and Trust Service Providers Act, 2008, Co-operative Societies Act, 2010 and the Money Services Business Act, 2011

- (b) persons who conduct business with a licensed person under subsection (a);
- (c) the economy of Antigua and Barbuda;
- (d) digital asset business regulation.

(2) The Commission shall take into consideration the results of any surveys conducted in formulating its policies.

## **PART II**

### **LICENSING**

#### **6. Restriction on carrying on digital asset business without a licence**

(1) Subject to section 7, a person shall not carry on digital asset business in or from within Antigua and Barbuda unless that person is a licensed undertaking in one of the classes specified in section 9.

(2) The Commission may license an undertaking to carry on one or more of the following digital asset business activities for the period specified in the licence—

- (a) issuing, selling or redeeming virtual coins, tokens or any other form of digital assets;
- (b) operating as a payment service business utilising digital assets which includes the provision of services for the transfer of funds;
- (c) operating as an electronic exchange;
- (d) providing custodial wallet services;
- (e) operating as a digital assets services vendor.

(3) A person who contravenes subsection (1) commits an offence and is liable—

- (a) on summary conviction, to a fine of \$50,000 or to imprisonment for one year or to both such fine and imprisonment;
- (b) on conviction on indictment, to a fine of \$250,000 or to imprisonment for five years or to both such fine and imprisonment.

#### **7. Exemption order**

(1) Section 6 shall not apply to any person exempted by or under an exemption order issued under this section.

(2) The Minister acting on the advice of the Commission may issue an exemption order, which shall provide for—

- (a) a specified person;
- (b) persons falling within a specified class,

to be exempt from the requirement of section 8.

(3) An exemption order may provide for an exemption to have effect—

- (a) in respect of all digital asset business activities under section 2(2);
- (b) only in respect of one or more of the digital asset business activities under section 2(2);
- (c) in respect of specified circumstances.

(4) An exemption order may be subject to conditions.

(5) The following activities shall not constitute digital asset business for the purposes of section 6 —

- (a) contributing connectivity software or computing power to a decentralized digital asset, or to a protocol governing transfer of the digital representation of value;
- (b) providing data storage or security services for a digital asset business, but is not otherwise engaged in digital asset business activity on behalf of other persons;
- (c) the provision of any digital asset business activity by an undertaking solely for the purposes of its business operations or the business operations of any subsidiary of it;
- (d) accepting and making payments using digital assets solely for the purposes of its business operations or the business operations of any subsidiary of it.

(6) In subsection (3)(c), “specified” means specified by the exemption order.

(7) An order made under this section is subject to the negative resolution procedure.

## **8. Application for a digital asset business licence**

(1) An application for a digital asset business licence shall be made to the Commission in the prescribed form and shall be accompanied by—

- (a) a business plan setting out the nature and scale of the digital asset business activity which is to be carried on by the applicant.
- (b) particulars of the applicant’s arrangements for the management of the business;
- (c) policies and procedures to be adopted by the applicant to meet the obligations of a financial institution under this Act, the Prevention of Terrorism Act 2005, The Money Laundering (Prevention) Act 1996 and The Proceeds of Crime Act 1993;

- (d) such other information and documents as the Commission may reasonably require for the purpose of determining the application; and
- (e) an application fee which shall be an amount determined by the Commission commensurate to the nature, scale and complexity of the digital asset business to be carried on by the undertaking.

(2) An application shall state the class of digital asset business licence for which the undertaking is applying.

## **9. Class of licence**

(1) Where the Commission is satisfied as to the matters outlined in section 8, the Commission shall issue to an applicant either —

- (a) a Class A licence, under which a person shall be licensed to provide any or all of the digital asset business activities under the definition of digital asset business; or
- (b) a Class B licence, under which a person shall be licensed to provide any or all of the digital asset business activities under the definition of digital asset business

for a defined period determined by the Commission.

(2) A licensed undertaking may apply to the Commission in the prescribed form to extend the period of validity of its licence.

(3) The application for an extension must be accompanied by such information as the Commission may require and the amount of the application fee as prescribed by the Commission

## **10. Determination of class of licence**

(1) Notwithstanding an application submitted by an undertaking under section 8, the Commission may determine whether an undertaking proposing to carry on a digital asset business shall be issued with a Class A or a Class B licence.

(2) The matters the Commission may take into account in its determination under subsection (1), are —

- (a) the interests of the clients or potential clients and of the public generally; and
- (b) the obligations that the Commission may have to impose on the undertaking due to the nature of the digital asset business activities it intends to carry on.

## **11. Grant and refusal of applications**

(1) The Commission may grant or refuse the application for a licence or permit.

(2) In making its determination whether to grant or refuse a licence, the Commission shall take into consideration —

- (a) whether the applicant is a fit and proper person to hold a licence;

(b) whether the directors, managers and officers of the business are fit and proper persons to operate a digital asset business;

(c) any previous experience that the applicant may have in operating a digital assets business;

(d) whether the applicant or any director, manager or officer of the business has ever been convicted in any jurisdiction of fraud, embezzlement or of any of the activity that could give rise to the offence of money laundering under the Money Laundering (Prevention) Act 1996, as amended.

(e) such other matters as the Commission may determine to be relevant given the nature of the activity in which the applicant will be engaged under the Licence.

(3) A licence issued under this section may be subject to such limitations on the scope of the digital asset business activity or the manner of operating the digital asset business as the Commission may determine to be appropriate having regard to the nature and scale of the proposed business.

## **12. Display and registration of licence**

(1) A licensed undertaking shall at all times keep the licence on display at its principal place of business in Antigua and Barbuda.

(2) The Commission shall publish on its website a list of every licensed and permitted undertaking and the class of licence issued to it.

## **13. Restriction of licence**

(1) The Commission may restrict a licence—

(a) if it appears to the Commission that the licenced undertaking is not in full compliance of its obligations but the circumstances are not such as to justify revocation;

(b) in connection with the revocation of a licence—

(i) when giving the undertaking notice that it proposes to revoke its licence; or

(ii) at any time after such notice has been given to the undertaking; or

(c) at any time after the licensed undertaking has served a notice surrendering its licence with effect from a later date.

(2) The Commission may restrict a licence by imposing such conditions as it thinks desirable for the protection of the licensed undertaking's clients or potential clients, and may in particular—

(a) require the undertaking to take certain steps or to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business activities in a particular way;

(b) impose limitations on the acceptance of digital asset business;

- (c) prohibit the licensed undertaking from soliciting digital asset business either generally or from persons who are not already its clients;
- (d) prohibit the licensed undertaking from accepting new digital asset business;
- (e) prohibit the licensed undertaking from entering into any other transactions or class of transactions;
- (f) require the removal of any officer or controller;
- (g) specify requirements to be fulfilled otherwise than by action taken by the undertaking.

(3) Any condition imposed under this section may be varied or withdrawn by the Commission.

(4) The Commission may, where it has made a determination on its own or on the application of a licensed undertaking, vary any condition imposed on a licence.

(5) The fact that a condition imposed under this section has not been complied with shall, where the restriction has been imposed pursuant to paragraphs (a) or (b) of subsection (1), be a ground for the revocation of the licence in question but shall not invalidate any transaction.

#### **14. Restriction in cases of urgency**

(1) The Commission may, if it considers it necessary as a matter of urgency, impose restriction on the licence of any licensed undertaking without prior notice.

(2) If the Commission take action under subsection (1), it shall immediately send written notice of the restriction to the licensed undertaking, giving reasons for the restriction and inviting representations from the licensed undertaking within 14 days of the receipt of the notice by the licensed undertaking.

(3) Where the licensed undertaking makes representations to the Commission in respect of the restrictions imposed under subsection (1), the Commission shall take such representations into consideration and may –

- (a) confirm its original decision to impose the restriction;
- (b) vary the restrictions imposed;
- (c) impose different restrictions;
- (d) shorten the time period for which the restriction shall apply;
- (e) rescind its original decision.

(4) The Commission shall, within 14 days of the receipt of the representations made by or on behalf of the licensed undertaking, give the licensed undertaking written notice of its decision under subsection (3) and, except where the decision is to rescind the original decision, the notice shall state the reason for the decision taken in subsection (3).



(5) Where the notice under subsection (4) is of a decision to take any of the action outlined at paragraphs (a) to (d), the notice shall have the effect of imposing the restriction in the manner specified in the decision.

### **15. Revocation of licence**

Subject to section 39 the Commission may revoke the licence of a licensed undertaking if the Commission is satisfied that—

- (a) the licensed undertaking has failed to comply with any obligation imposed on it by or under this Act or is carrying on business in a manner not authorised by its licence;
- (b) the licensed undertaking is in breach of a requirement under the Money Laundering (Prevention) Act 1996 or any of the directives imposed by the FSRC.
- (c) the Commission has been provided with false, misleading or inaccurate information by or on behalf of the licensed undertaking or, in connection with an application for a licence, by or on behalf of a person who is or is to be an officer or controller of the undertaking;
- (d) the interests of the clients or potential clients of the licensed undertaking are in any way threatened; or
- (e) the fixed period of the licence granted to it has expired.

### **16. Notice of restriction or revocation of licence**

(1) Where the Commission proposes to—

- (a) restrict a licence under section 13(1);
- (b) vary a restriction imposed on a licence otherwise than with the agreement of the undertaking concerned; or
- (c) revoke a licence under section 15,

the Commission shall give to the licensed undertaking concerned a warning notice under section 34.

(2) Where—

- (a) the ground for a proposal to impose or vary a restriction or for a proposed revocation is that it appears to the Commission that fit and proper criteria may not be or may not have been fulfilled, in the case of any person; or
- (b) a proposed restriction consists of or includes a condition requiring the removal of any person as a controller or an officer,

the Commission shall give that person a copy of the warning notice but the Commission may omit from such copy any matter which does not relate to him.

(3) After giving a notice under subsection (1) and taking into account any representations made under section 34(2), the Commission shall decide whether—

- (a) to proceed with the action proposed in the notice;
- (b) to take no further action;
- (c) if the proposed action was to revoke the undertaking's licence, to restrict its licence instead; or
- (d) if the proposed action was to restrict the undertaking's licence or to vary the restrictions on a licence, to restrict it or to vary the restrictions in a different manner.

(4) Once the Commission has made a decision under subsection (3), it shall forthwith provide either a decision notice under section 35 or a notice of discontinuance under section 36, as the case may be.

(5) The Commission shall publish in the *Gazette*, in such form as it thinks fit, notice of every revocation of a licence under the Act

## 17. Fees

(1) A licensed undertaking shall pay such fee as may be determined by the Commission.

- (a) on the grant of a licence under section 13;
- (b) annually, before 31 March in every year following the year in which it was licensed;
- (c) at the time of making an application under section 8 in relation to exemption from or modification of, prudential rules or requirements;
- (d) at the time of making an application for an extension of a defined licence period;
- (e) at the time of making an application for variance of a direction under section 11(4).

(2) Annual fees payable by all licensed undertakings in accordance with subsection (1)(b) shall apply to the twelve-month period ending on the 31 December of that year.

(3) For each week or part of a week that a licensed or permitted undertaking fails to comply with a requirement imposed on it by subsection (1), it is liable to a civil penalty not exceeding \$5,000.

(4) The Commission, if satisfied that payment of the annual fee in whole or in part is inappropriate after taking into account the diminution in the level of digital asset business activity, may—

- (a) defer payment of all or part of the annual fee otherwise due, to such date in the future as it considers appropriate; or
- (b) remit all or part of the annual fee otherwise due, on such terms and conditions as it considers appropriate.

#### **18. Prospectus for the ssue or sale of digital assets**

- (1) A licensed undertaking shall not participate in or provide financial services related to the issue or offer for sale of a digital asset without –
  - (a) submitting a prospectus to the Commission for approval at least 14 days before the proposed date of its publication;
  - (b) approval of the prospectus by the Authority; and
  - (c) publishing the approved prospectus prior to the issue or offer for sale.;
- (2) A prospectus shall be prepared in accordance with the requirements in Schedule 1 and shall be submitted to the Commission for approval no less than 14 days before the proposed date of its publication.
- (3) The Commission may approve a prospectus if it complies with the requirements of this Act.
- (4) An approved prospectus shall be valid for a period not exceeding twelve months from the date of approval.
- (5) A person shall have the right to withdraw purchase or subscription to an issue or offer for sale, in addition to any other remedy, where a prospectus contains a misrepresentation or false information that induced the person to make the purchase or subscription.
- (6) A person shall exercise the right under subsection (5) as soon as practicable once knowledge of the misrepresentation or false information came to the knowledge of that person.
- (7) A licensed undertaking shall be liable to pay compensation to a person who relied on the misrepresentation or false information contained in the prospectus to purchase or subscribe to an issue or offer for sale and suffers loss as a result.

#### **19. Amendment to a prospectus**

- (1) A licenced undertaking may, with the approval of the Commission, amend its prospectus.
- (2) The licenced undertaking shall submit the proposed amendment to the Commission for its review.
- (3) The licenced undertaking shall immediately upon approval of the amendment by the Commission –

- (a) Publish the details of the amendment; and
- (b) Issue a notice of the amendment to any person who purchased or subscribed to an issuer or offer for sale.
- (4) Where a notice is issued pursuant to subsection (3), a copy of the notice and evidence of the issuance of that notice shall be submitted to the Commission.
- (5) A person who purchased or subscribed to an issue or offer for sale prior to an amendment to the prospectus, shall have the right to withdraw the purchase or subscription within 30 days of the date the notice was issued to that person.
- (6) A licensed undertaking shall communicate information regarding the digital asset business and any updates or changes to that information in a complete, comprehensive and balanced manner, so a client can evaluate the features, costs and risks of the digital asset business in which the licensed undertaking is engaged.

## **20. Powers of the Commission regarding a prospectus**

- (1) The Commission may waive the inclusion of certain information required for a prospectus if the Commission considers that –
  - (a) disclosure of this information would be contrary to the public interest;
  - (b) the disclosure of the information would be seriously prejudicial to the licenced undertaking;
  - (c) the public would not be misled as to the facts and circumstances necessary to make an informed decision of the licenced undertaking and the nature of the business.
  - (d) essential not disclosing the information would not mislead the information provided that the omission of such information
- (2) The Commission shall have the power to –
  - (a) order an assessment to include information in addition to the requirements in Schedule 1, or subsequent to approval of the prospectus;
  - (b) suspend an issue or offer for sale where an order for amendment is made subsequent to approval of a prospectus under paragraph (a);
  - (c) suspend or cancel an issue or offer for sale of a digital asset if it is in the public interest; and
  - (d) issue a notice advising the public of any order made under paragraph (a) or (b).
- (3) The Commission shall not be liable to any action for damages suffered as a result of any prospectus approved by the Commission.

### **PART III**

#### **ADMINISTRATIVE MATTERS**

##### **21. Principal Office**

- (1) Every licensed undertaking shall maintain a principal office in Antigua and Barbuda.
- (2) Every licensed undertaking shall have at its principal office a senior representative of the business who shall be responsible for –
  - (a) ensuring that the business of the licenced undertaking is being conducted in accordance with this Act and the Money Laundering (Prevention) Act;
  - (b) ensuring the directives of the Commission are being complied with.

##### **22. Senior representative**

- (1) Every licensed undertaking shall appoint a senior representative that satisfies the requirements of subsection (2).
- (2) The senior representative shall be a person approved by the Commission to act in such capacity on behalf of the licensed undertaking.
- (3) The approved senior representative shall maintain an office in Antigua and Barbuda.
- (4) At the time of licensing, the licensed undertaking shall provide written notice to the Commission of the—
  - (a) location of the senior representative’s office;
  - (b) particulars of the senior representative.
- (5) If any information required by notification in accordance with subsection (4) is changed, the licensed undertaking shall give written particulars of the change to the Commission within 14 days of the date the change was made.
- (6) A licence holder shall not —
  - (a) terminate the appointment of its senior representative; and
  - (b) a senior representative shall not cease to act as such, until it or he gives 30 days’ notice in writing to the Commission of the intention to do so.
- (7) If a senior representative willfully fails to give notice required in accordance with subsection (6) to the Commission he commits an offence.

##### **23. Senior representative to report certain events**

- (1) A senior representative shall forthwith notify the Commission, in such manner as it may direct,—

- (a) on his reaching a view that there is a likelihood of the licensed undertaking for which he acts becoming insolvent; or
- (b) on its coming to his knowledge, or his having reason to believe, that an event to which this section applies has occurred.

(2) Within 14 days of such notification, the senior representative shall furnish the Commission with a report in writing setting out all the particulars of the case that are available to him.

(3) As respects any senior representative, this section applies to the following events, being events in which the licensed undertaking for which he acts as senior representative is involved, that is to say—

- (a) failure by the licensed undertaking to comply substantially with a condition imposed upon the licensed undertaking by the Commission;
- (b) failure by the licensed undertaking to comply with a modified provision, or with a condition, being a provision or condition specified in a direction given to the licensed undertaking by the Commission;
- (c) involvement of the licensed undertaking in any criminal proceedings whether in Antigua and Barbuda or abroad;
- (d) the licensed undertaking ceasing to carry on digital asset business in or from within Antigua and Barbuda;
- (e) a material change to the business of the licensed undertaking;
- (f) a cyber reporting event.

## **24. Notification of change of controller or officer**

(1) A licensed undertaking shall give written notice to the Commission of the fact of any person having become or ceased to be a controller or officer of the licensed undertaking.

(2) A notice required to be given under subsection (1) shall be given before the end of the period of 14 days beginning with the day on which the licensed undertaking becomes aware of the relevant facts.

(3) A licensed undertaking which fails to give a notice required by this section is liable to a civil penalty calculated in accordance with subsection (4).

(4) For each week or part of a week that a licensed undertaking fails to comply with a requirement imposed under subsection (1), it is liable to a civil penalty not exceeding \$5,000.

## 25. Material change to business

(1) No licensed undertaking shall effect a material change within the meaning of subsection (2) unless it has notified the Commission of such proposed material change as required under subsection (4).

(2) For the purposes of subsection (1), the following changes are material—

- (a) any plan or proposal to introduce or offer a new product, service, or activity, or to make a material change to an existing product, service, or where applicable digital asset business activity;
- (b) amalgamation with or acquisition of another legal person;
- (c) sale of a subsidiary;
- (d) acquisition of controlling interest in an undertaking;
- (e) outsourcing of the functions of the digital asset business;
- (f) change to the most recent business plan submitted to the Commission.

(3) A notice under this section shall be in such form, shall contain such information and shall be accompanied by such documents as the Commission may require.

(4) The requirements referred to in subsection (1) are that—

- (a) the licensed undertaking has served on the Commission a notice in writing stating that the licensed undertaking intends to effect such a material change; and
- (b) either—
  - (i) the Commission, before the end of the period of 30 days beginning with the date of service of that notice has notified the licensed undertaking in writing that there is no objection to the licensed undertaking effecting the material change; or
  - (ii) that period has elapsed without the Commission having served the licensed undertaking with a preliminary written notice pursuant to subsection (8) to the material change.

(5) A notice under subsection (4)(a) shall contain such information as the Commission may direct and the Commission, after receiving such a notice from any person, may by notice in writing require it to provide such additional information or documents as the Commission may reasonably require for deciding whether to serve notice of objection.

(6) Where additional information or documents are required from any person by a notice under subsection (5), the time between the giving of the notice and the receipt of the information or documents shall be added to the period mentioned in subsection (4)(b).

(7) The Commission shall after receipt of a notification from a licensed undertaking under this section serve a notice of objection under this section on a person who has given notice under subsection (4)(a) unless it is satisfied—

- (a) that the interests of any clients of the licensed undertaking would not in any manner be threatened by the material change; and
- (b) without prejudice to paragraph (a) that, having regard to the material change the requirements of this Act would continue to be complied with or, if any of those requirements are not complied with, that the licensed undertaking concerned is likely to undertake adequate remedial action.

(8) Before serving a notice of objection under this section the Commission shall serve the person concerned with a preliminary written notice stating that the Commission is considering service on that person of a notice of objection and that notice—

- (a) shall specify which of the matters mentioned in subsection (2) the Commission is not satisfied about and subject to subsection (6), the reasons for which it is not satisfied; and
- (b) give particulars of the rights conferred by subsection (4).

(9) A person served with a notice under subsection (8) may, within a period of 28 days beginning with the day on which the notice is served—

- (a) make written representations to the Commission; and
- (b) where such representations are made the Commission shall take them into account in deciding whether to serve a notice of objection.

(10) A notice of objection under this section shall specify which of the matters mentioned in subsection (2) the Commission is not satisfied about and, subject to subsection (11), the reasons for which it is not satisfied; and

(11) Subsection (8)(a) shall not require the Commission to specify any reason which would in its opinion involve the disclosure of confidential information, which would be prejudicial to a third party.

## **PART IV**

### **INVESTIGATIONS**

#### **26. Power to obtain information and reports**

(1) The Commission may by notice in writing served on a licensed undertaking—



- (a) require the undertaking to provide the Commission (or such person acting on behalf of the Commission as may be specified in the notice), at such time or times or at such intervals or in respect of such period or periods as may be so specified, with such information as the Commission may reasonably require for ensuring that the undertaking is complying with the provisions of this Act and any code of practice, and for safeguarding the interests of clients and potential clients of the undertaking;
  - (b) require the undertaking to provide the Commission with a report, in such form as may be specified in the notice, by the undertaking's auditor or by an accountant or other person with relevant professional skill in, or on any aspect of, any matter about which the Commission has required or could require the undertaking to provide information under paragraph (a).
- (2) The person appointed by a licensed undertaking to make any report required under subsection (1)(b) shall forthwith give written notice to the Commission of any fact or matter of which he becomes aware which is likely to be of material significance for the discharge, in relation to the licensed undertaking, of the functions of the Commission under this Act.

## **27. General power to require production of documents**

- (1) The Commission may—
- (a) by notice in writing served on a licensed undertaking require it to produce, within such time and at such place as may be specified in the notice, such document or documents of such description as may be so specified;
  - (b) authorise an officer, servant or agent of the Commission, producing such evidence of his authority, to require it to provide to him such information, or to produce to him such documents, as he may specify, being such information or documents as the Commission may reasonably require for the performance of its functions under this Act.
- (2) Where, by virtue of subsection (1), the Commission or any officer, servant or agent of the Commission has power to require the production of any documents from a licensed undertaking, the Commission or that officer, servant or agent shall have the like power to require the production of those documents from any person who appears to be in possession of them; but where any person from whom such production is required claims a lien on documents produced by him, the production shall be without prejudice to the lien.
- (3) The power under this section to require a licensed undertaking or other person to produce any documents includes power—
- (a) if the documents are produced, to take copies of them or extracts from them and to require that undertaking or person, or any other person who is a present or past controller or officer of, or is or was at any time employed by or acting as an

employee of, the licensed undertaking in question, to provide an explanation of any of them; and

(b) if the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(4) The Commission may also exercise the powers conferred by section 26 and subsection (1) of this section in relation to any company which is or has at any relevant time been—

(a) a parent company, subsidiary company or related company of that undertaking;

(b) a subsidiary company of a parent company of that undertaking;

(c) a parent company of a subsidiary company of that undertaking; or

(d) a company in the case of which a shareholder controller of that undertaking, either alone or with any associate or associates, holds 50% or more of the shares or is entitled to exercise, or control the exercise of, more than 50% of the voting power at a general meeting.

(5) The Commission may by notice in writing served on any person who is or is to be a controller or officer of a licensed undertaking require him to provide the Commission, within such time as may be specified in the notice, with such information or documents as the Commission may reasonably require for determining whether he is a fit and proper person to hold the particular position which he holds or is to hold.

(6) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section commits an offence and is liable on summary conviction to a fine of \$10,000 or to imprisonment for six months or to both such fine and imprisonment.

(7) Nothing in this section shall require the disclosure or production by a person of information or documents which he would be entitled to refuse to disclose or produce on the grounds of legal professional privilege in proceedings in Antigua and Barbuda.

## **28. Right of entry to obtain information and documents**

(1) Any officer, servant or agent of the Commission may, on producing if required evidence of his authority, enter any premises occupied by a person on whom a notice has been served under sections 26(1) and 27(1) for the purpose of obtaining there the information or documents required by that notice and of exercising the powers conferred by section 27(3).

(2) Any officer, servant or agent of the Commission may, on producing if required evidence of his authority, enter any premises occupied by any person on whom a notice could be served under sections 26(1) and 27(1) for the purpose of obtaining there such information or documents as are specified in the notice, but the Commission shall not authorise any person to act under this subsection unless it has reasonable cause to believe that if such a notice were served it would not be complied with or that any documents to which it would relate would be removed, tampered with or destroyed.

(3) Any person who intentionally obstructs a person exercising rights conferred by this section commits an offence and is liable on summary conviction to a fine of \$10,000 or to imprisonment for six months or to both such fine and imprisonment.

## **29. Investigations on behalf of the Commission**

(1) If it appears to the Commission desirable to do so in the interests of the clients or potential clients of a licensed undertaking, the Commission may appoint one or more competent persons to investigate and report to the Commission on—

- (a) the nature, conduct or state of the undertaking's business or any particular aspect of it; or
- (b) the ownership or control of the undertaking, and the Commission shall give written notice of any such appointment to the undertaking concerned.

(2) If a person appointed under subsection (1) thinks it necessary for the purposes of the investigation he is appointed to carry out, he may also investigate the business of any company which is or has at any relevant time been—

- (a) a parent company, subsidiary company or related company of the undertaking under investigation;
- (b) a subsidiary company or related company of a parent company of that undertaking;
- (c) a parent company of a subsidiary company of that undertaking; or
- (d) a company in the case of which a shareholder controller of that undertaking, either alone or with any associate or associates, holds 50% or more of the shares or is entitled to exercise, or control the exercise of, more than 50% of the voting power at a general meeting.

(3) Where a person appointed under subsection (1) decides to investigate the business of any company by virtue of subsection (2), he shall give it written notice to that effect.

(4) It shall be the duty of every person who is or was a controller, officer, employee, agent, banker, auditor or barrister and attorney of a licensed undertaking which is under investigation (whether by virtue of subsection (1) or (2)), or any person appointed to make a report in respect of that undertaking under section 26(1)(b)—

- (a) to produce to the persons appointed under subsection (1), within such time and at such place as they may require, such documents, or documents of such description, as may be specified, being documents the production of which may be reasonably required for the investigation, which are in his custody or power;

- (b) to attend before the persons so appointed at such time and place as they may require and answer questions relevant to the investigation as the persons appointed under subsection (1) may require; and
- (c) otherwise to give the persons so appointed all assistance in connection with the investigation which he is reasonably able to give, and those persons may take copies of or extracts from any documents produced to them under paragraph (a).

(5) For the purpose of exercising his powers under this section, a person appointed under subsection (1) may enter any premises occupied by a licensed undertaking which is being investigated by him under this section; but he shall not do so without prior notice in writing.

(6) A person exercising powers by virtue of an appointment under this section shall, if so required, produce evidence of his authority.

(7) Unless the Commission otherwise directs, the licensed undertaking under investigation shall pay to the Commission all expenses of, and incidental to, the investigation.

(8) Any person who—

- (a) without reasonable excuse, fails to produce any documents which it is his duty to produce under subsection (4);
- (b) without reasonable excuse, fails to attend before the persons appointed under subsection (1) when required to do so;
- (c) without reasonable excuse, fails to answer any question which is put to him by persons so appointed with respect to a licensed undertaking which is under investigation or a company which is being investigated by virtue of subsection (2); or
- (d) intentionally obstructs a person in the exercise of the rights conferred by subsection (5), commits an offence and is liable on summary conviction to a fine of \$10,000 or to imprisonment for six months or to both such fine and imprisonment.

(9) A statement made by a person in compliance with a requirement imposed by virtue of this section shall not be used in evidence against him.

(10) Nothing in this section shall require the disclosure or production by a person of information or documents which he would be entitled to refuse to disclose or produce on the grounds of legal professional privilege in proceedings in Antigua and Barbuda.

### **30. Investigations of suspected contraventions**

(1) The Commission may conduct an investigation if it appears to the Commission that—

- (a) a person may have contravened section 6;
- (b) any exempted person may have contravened any restriction or exemption or condition given under an exemption order under section 7;

- (c) an undertaking may have contravened a requirement imposed by or under this Act, regulations or orders made thereunder.

(2) The power conferred by subsection (1)(c) may be exercised in relation to a former licensed undertaking but only in relation to—

- (a) business carried on at any time when the undertaking was licensed under this Act; or
- (b) the ownership or control of an undertaking at any time when it was licensed under this Act.

### **31. Power to require production of documents during investigation**

(1) The Commission may by notice in writing require the person who is the subject of an investigation under section 30 (“the person under investigation”) or any person connected with the person under investigation—

- (a) to provide, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such information as the Commission may reasonably require for the purpose of the investigation;
- (b) to produce, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such documents, or documents of such description, as may be specified, being documents the production of which may be reasonably required for the investigation;
- (c) to attend at such place and time as may be specified in the notice and answer questions relevant to the enquiry as the Commission may require.

(2) The Commission may by notice in writing require every person who is or was a controller, officer, employee, agent, banker, auditor or barrister and attorney of an undertaking which is under investigation by virtue of subsection (1)—

- (a) to produce to the commission, within such time and at such place as the Commission may require, such documents, or documents of such description, as may be specified, being documents the production of which may be reasonably required for the investigation, which are in his custody or power;
- (b) to attend before the Commission at such time and place as the Commission may require and answer questions relevant to the investigation as the Commission may require; and
- (c) to take such actions as the Commission may direct in connection with the investigation.

(3) The Commission or a duly authorised officer, servant or agent of the Commission may take copies of or extracts from any documents produced under this section.

(4) Any officer, servant or agent of the Commission may, on producing if required evidence of his authority, enter any premises occupied by a person on whom a notice has been served under subsection (1) for the purpose of obtaining there the information or documents required by the notice, putting the questions referred to in paragraph (c) of that subsection or exercising the powers conferred by subsection (3).

(5) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section or intentionally obstructs a person in the exercise of the rights conferred by subsection (4) commits an offence and is liable on summary conviction to a fine of \$10,000 or to imprisonment for six months or to both such fine and imprisonment.

(6) A statement made by a person in compliance with a requirement imposed by virtue of this section shall not be used in evidence against him.

(7) Nothing in this section shall require the disclosure or production by a person of information or documents which he would be entitled to refuse to disclose or produce on the grounds of legal professional privilege in proceedings in Antigua and Barbuda.

(8) For the purposes of this section, a person is connected with the person under investigation if such person is or has at any relevant time been—

- (a) a member of a group to which the person under investigation belongs;
- (b) a controller of the person under investigation;
- (c) a partner of a partnership of which the person under investigation is a member.

### **32. Powers of entry**

(1) A magistrate may issue a warrant under this section if satisfied on information on oath that the Commission is conducting an investigation under sections 21 and 22—

- (a) a person has failed to comply with a notice served on him under section 63;
- (b) that there are reasonable grounds for suspecting the completeness of any information provided or documents produced by the person in response to a notice served on him under section 31; or
- (c) that there are reasonable grounds for suspecting that if a notice were served on the person under section 31 it would not be complied with or that any documents to which it would relate would be removed, tampered with or destroyed.

(2) A warrant under this section shall authorise any police officer not below the rank of inspector, together with any other person named in the warrant and any other police officers—

- (a) to enter any premises occupied by the person under investigation which are specified in the warrant, using such force as is reasonably necessary for the purpose;
- (b) to search the premises and take possession of any documents appearing to be such documents as are mentioned in subsection (1) or to take, in relation to any

such documents, any other steps which may appear to be necessary for preserving them or preventing interference with them;

(c) to take copies of or extracts from any such documents;

(d) to require any person named in the warrant to answer questions relevant for determining whether that person is guilty of any such contravention as is mentioned in section 30.

(3) A warrant under this section shall continue in force until the end of the period of one month beginning with the day on which it is issued.

(4) Any documents of which possession is taken under this section may be retained—

(a) for a period of three months; or

(b) until the conclusion of proceedings, if within the period of three months referred to in paragraph (a), proceedings to which the documents are relevant are commenced against any person for any such contravention as is mentioned in section 30.

(5) Any person who intentionally obstructs the exercise of any right conferred by a warrant issued under this section or fails without reasonable excuse to comply with any requirement imposed in accordance with subsection (2)(d) commits an offence and is liable—

(a) on summary conviction, to a fine of \$25,000 or to imprisonment for six months or to both such fine and imprisonment;

(b) on conviction on indictment, to a fine of \$50,000 or to imprisonment for two years or to both such fine and imprisonment.

### **33. Obstruction of investigations**

(1) A person who knows or suspects that an investigation is being or is likely to be carried out—

(a) into a suspected contravention of section 6 or a term or condition of an exemption order made under section 7; or

(b) under section 30, commits an offence if he falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents which he knows or suspects are or would be relevant to such an investigation unless he proves that he had no intention of concealing facts disclosed by the documents from persons carrying out such an investigation.

(2) A person guilty of an offence under this section is liable—

(a) on summary conviction, to a fine of \$25,000 or to imprisonment for six months or to both such fine and imprisonment;

- (b) on conviction on indictment, to a fine of \$50,000 or to imprisonment for two years or to both such fine and imprisonment.

## **PART V**

### **DISCIPLINARY MEASURES**

#### **34. Warning notices**

- (1) A warning notice must—

- (a) state the action which the Commission proposes to take;
- (b) be in writing; and
- (c) give reasons for the proposed action.

(2) The warning notice must specify a reasonable period (which may not be less than 14 days) within which the person to whom it is given may make representations to the Commission; and where such representations are made, the Commission shall take them into account in deciding whether to give a decision notice.

- (3) The Commission may extend the period specified in the notice.

#### **35. Decision notices**

- (1) A decision notice must—

- (a) be in writing;
- (b) give reasons for the Commission's decision to take the action to which the notice relates;
- (c) give its decision; and
- (d) give an indication of the right to appeal the decision to the tribunal under section 48.

(2) A decision notice shall be given within 90 days beginning with the day on which a warning notice under section 34 was given; and if no decision notice under subsection (1) is given within that period, the Commission shall be treated as having at the end of that period given a notice of discontinuance under section 36.

(3) A decision notice about the imposition of a civil penalty must state the date when payment is required.

- (4) A decision notice about public censure must—

- (a) set out the terms of the statement;



(b) give details of the manner in which, and the date on which, the statement will be published.

(5) A decision notice about a prohibition order must—

(a) name the individual to whom the prohibition order applies;

(b) set out the terms of the order; and

(c) be given to the individual named in the order.

(6) A decision notice shall state the day on which it is to take effect.

(7) The Commission may, before it takes the action to which a decision notice (“the original notice”) relates, give the person concerned a further decision notice which relates to different action in respect of the same matter.

(8) The Commission may give a further decision notice as a result of subsection (7) only if the person to whom the original notice was given consents.

(9) If the person to whom a decision notice under subsection (1) is given had the right to refer the matter to which the original decision notice related to the tribunal, he has that right as respects the decision notice under subsection (7).

### **36. Notices of discontinuance**

(1) Subject to section 35(2), if the Commission decides not to take the action proposed in a warning notice it must give a notice of discontinuance to the person to whom the warning notice was given.

(2) A notice of discontinuance must identify the action which is being discontinued.

### **37. Publication**

(1) The Commission may publish such information about a matter to which a decision notice relates as it considers appropriate.

(2) The Commission must not publish a decision notice under subsection (1) before notifying the person concerned.

### **38. Surrender of licence**

(1) A licensed undertaking with the prior approval of the Commission may surrender its licence by written notice to the Commission.

(2) A surrender shall take effect on the date of the giving of approval by the Commission.

(3) The surrender of a licence shall be irrevocable unless the Commission by notice in writing allows it to be withdrawn.

### **39. Winding up on petition from the Commission**

(1) On a petition presented by the Commission by virtue of this section, the Court may wind up a licensed undertaking in respect of which a licence is revoked, if the Court is of the opinion that it is just and equitable that the undertaking be wound up.

(2) Part IV (Winding Up) of the Companies Act 1995 shall apply to the winding up of a licensed undertaking under this section.

### **40. Rights of appeal**

A licensed undertaking granted a Class A or Class B licence which is aggrieved by a decision of the Commission—

- (a) to restrict its licence, to restrict it in a particular manner or to vary any restrictions of its licence;
- (b) to revoke its licence;
- (c) to impose a civil penalty;
- (d) to publish a statement in respect of it; or
- (e) to remove an officer or a controller, may appeal against the decision to the High Court.

## **PART VI**

### **AUDITED ACCOUNTS**

### **41. Duty to prepare annual audited financial statements and accounts**

(1) Every licensed undertaking shall prepare annual audited financial statements or accounts as required by this section in respect of all transactions and balances relating to its business.

(2) Financial statements must be audited by an approved auditor.

(3) Prior to the appointment of an auditor, a licensed undertaking shall submit written particulars of such person to the Commission for approval.

(4) Financial statements of licensed undertakings shall be audited by the approved auditor in accordance with generally accepted auditing standards for Canada, the United Kingdom, the United States of America, International Financial Reporting Standards or such standards as the Commission may recognise; and the approved auditor shall be required to provide an auditor's report in respect thereof.

(5) Not later than four months after the close of its financial year every licensed undertaking shall file a copy of its audited financial statements and auditor's report or accounts with the Commission.

(6) A licensed undertaking shall keep a copy of the most recent audited financial statements together with a copy of the auditor's report thereon or accounts as the case may be, at its head office for a period of not less than five years beginning with its filing date under subsection (5).

(7) If a licensed undertaking fails to appoint an approved auditor as required by this section or, at any time, fails to fill a vacancy for such auditor, the Commission may appoint an approved auditor and shall fix the remuneration to be paid by that digital asset business to such auditor.

(8) A licensed undertaking which fails to comply with this section commits an offence and is liable on summary conviction to a fine of \$25,000.

(9) For the purposes of this Part, "approved auditor" means an auditor who is a person entitled to practise as a public accountant and is a member of a professional body approved by the Commission for the purposes of this Act.

(10) No person having an interest in any licensed undertaking otherwise than as a client, and no officer, servant or agent of any digital asset business shall be eligible for appointment as an approved auditor for that licensed undertaking; and any person appointed as such auditor to any licensed undertaking who subsequently acquires such interest or becomes an officer, servant or agent of that licensed undertaking shall cease to be an approved auditor.

## **42. Auditor to communicate certain matters to Commission**

(1) An auditor of a licensed undertaking shall in the circumstances specified in subsection (2) forthwith give written notice to the Commission of those matters.

(2) The circumstances referred to in subsection (1) are—

- (a) his resignation before the expiration of his term of office;
- (b) his intention not to seek to be re-appointed;
- (c) a decision to include a modification of his report on the licensed undertaking's financial statements and, in particular, a qualification or denial of his opinion, or the statement of an adverse opinion.

(3) An auditor of a licensed undertaking shall forthwith give written notice to the Commission of any fact or matter of which he becomes aware which is likely to be of material significance for the discharge, in relation to the licensed undertaking of which he is an auditor, of the Commission's functions under this Act.

(4) An auditor who fails to comply with subsection (1) commits an offence and is liable on summary conviction to a fine of \$25,000.

## **PART VII**

### **OFFENCES AND PENALTIES**

#### **43. Access to and maintenance of client transaction records**

(1) A licensed undertaking, where the Commission requires, must provide the Commission with online or automated real time read-only access to both its client and its own digital asset transaction records.

(2) A licensed undertaking must maintain a record of both its client and its own transactions at its head office for a period of not less than five years beginning from the date the transaction occurred.

#### **44. False documents or information**

(1) Any person who, for any purposes of this Act—

- (a) issues a document, or supplies information, which is false or misleading in a material respect; or
- (b) signs a document which is false or misleading in a material respect; or
- (c) takes part in the preparation or issue of a document, or the supplying of information, which is false in a material respect, commits an offence.

(2) A person who commits an offence under subsection (1) is liable—

- (a) on summary conviction, to a fine of \$25,000 or to imprisonment for two years or to both such fine and imprisonment;
- (b) on conviction on indictment, to a fine of \$50,000 or to imprisonment for four years or to both such fine and imprisonment.

(3) It shall be a defence for a person charged with an offence under subsection (1) to prove—

- (a) if an individual, that he had no knowledge of the falsity or misleading character of the document or information, and took every reasonable precaution to ensure its accuracy; and
- (b) if not an individual, that every person acting on such person's behalf had no such knowledge, and took every such reasonable precaution, as aforesaid.

#### **45. Offences**

(1) Where an offence under this Act committed by a licensed undertaking is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, any officer of the licensed undertaking, or any person who was purporting to act in any such capacity, he, as well as the licensed undertaking, commits that offence and shall be liable to be

proceeded against and punished accordingly unless such person shows that he took all reasonable steps to avoid the Commission of an offence.

(2) Where the affairs of a licensed undertaking are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the licensed undertaking.

#### **46. Prohibition on use of words "digital asset business"**

(1) No person carrying on business in or from Antigua and Barbuda shall use any name which indicates or may reasonably be understood to indicate (whether in English or in any other language) that it is carrying on digital asset business unless it is a licensed undertaking under section 8.

(2) Any person using a name in contravention of subsection (1) commits an offence and is liable on summary conviction to a fine of \$5,000.

#### **47. Notices**

(1) This section has effect in relation to any notice, direction or other document required or authorised by or under this Act to be given to or served on any person other than the Commission.

(2) Any such document may be given to or served on the person in question by—

- (a) delivering it to him;
- (b) leaving it at his principal office; or
- (c) sending it to the licensed undertaking by electronic or other similar means which produces a document containing the text of the communication.

(3) Any such document may in the case of a company be given to or served by—

- (a) delivering it to the company's principal office or registered office in Antigua and Barbuda; or
- (b) sending it by registered post to the address of the licensed undertaking on record at the Commission.

#### **48. Service of notice on the Commission**

(1) No notice required by this Act to be given to or served on the Commission shall be regarded as given or served until it is received.

(2) Subject to subsection (1), such notice may be given by electronic or other similar means which produces a document containing the text of the communication.

**49. Civil debt and civil penalties**

(1) When a person is convicted of an offence under this Act, such person shall not also be liable to a civil penalty imposed by or under this Act in relation to the same matters.

(2) A civil penalty levied pursuant to this Act may be recovered by the Commission as a civil debt.

**50. Regulations**

(1) The Minister may, after consulting with the Commission, make regulations prescribing anything which may be prescribed under this Act and generally for the implementation of this Act.

(2) Without prejudice to the generality of subsection (1), regulations may in particular provide with respect to any of the following matters—

- (a) any matter relating to the conduct of a digital asset business;
- (b) the requirement for any additional service or services to be deemed a digital asset business activity;
- (c) the preparation, adoption and implementation of processes or procedures relating to a digital asset business.

(3) Regulations made under subsection (1) may—

- (a) prescribe penalties not exceeding \$10,000 for any breach of the regulations;
- (b) make such transitional, incidental or supplementary provision as appears to the Minister to be necessary or expedient.

(4) Regulations made under this Act shall be subject to the negative resolution procedure.

**51. Transitional**

(1) An undertaking carrying on digital asset business prior to the commencement of this Act shall be required to submit an application to the Commission in accordance with section 8 within two months of the date of commencement of this Act.

(2) An undertaking is liable to pay the fee prescribed by virtue of section 12 on the issue of its licence under subsection (1), but is liable to pay the fee prescribed thereunder on or before 31 March and annually thereafter, and the provisions of section 17(3) shall apply in relation to failure to pay such fee.

(3) Where the undertaking referred to in subsection (1) makes an application for a licence within two months from the date of commencement of this Act, it may continue to carry on digital asset business activities without a licence until that application is approved, declined or withdrawn.

Passed the House of Representatives on  
the      day of      , 2020.

Passed the Senate on the      day of  
   , 2020.

.....  
*Clerk to the House of Representatives.*

.....  
*Clerk to the Senate.*

## **EXPLANATORY MEMORANDUM**

**This Bill** seeks to provide for the regulation of those who would wish to engage in digital asset business and for the protection of their clients.

The Bill contains 56 clauses distributed over seven (7) parts.

Part 1 – Preliminary (Clauses 1-5) defines the relevant terms of the Act; Paramount among these is the definition of digital asset business. The activities that are considered to be engaging in a Digital Asset Business are spelt out in section 2 subsection (2).

Part 2 – Licensing (Clauses 6 – 20) explains the requirements for obtaining a licence under the Act. There are two (2) classes of licences: Class A licence which allows for a digital asset business to engage in all categories of activities associated with a digital asset business and a Class B licence that allows for participation in only some of the activities outlined in section 2(2).

Part 3 – Administrative matters (Clauses 21 – 25). This part deals with the required Administrative framework for a digital asset business. It also specifies the requirements that must be met by the business in fulfilling its obligation to the Commission. Attention is drawn to the sections dealing with the publication of a prospectus and the making of an offer or issue.

Part 4 – Investigations (Clauses 26 – 33) gives the commission the power to conduct search and to inspect documents for the protection of clients and potential clients as well as to ensure compliance with AML/CFT requirements.

Part 5 – Disciplinary measures (Clauses 34 – 40)

Part 6 – Audited Accounts and the requirement to keep proper records (Clauses 41 -42).

Part 7 Offences and Penalties (Clauses 43 – 5)

Hon. Gaston Browne  
Minister of Finance